

Abenicio Cisneros [SBN 302765]  
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Attorneys for Petitioner ADRIAN RISKIN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

ADRIAN RISKIN,

Petitioner,

vs.

LARCHMONT VILLAGE PROPERTY  
OWNERS ASSOCIATION,

Respondent.

) Case No.: BS172934

) **PETITIONER'S EX PARTE**  
) **APPLICATION FOR ORDER TO SHOW**  
) **CAUSE RE: CONTEMPT AND**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT THEREOF**

) Department: 82

) Judge: Hon. Mary H. Strobel

) Petition Filed: March 20, 2019

) Hearing on Petition: June 4, 2019

) Ex Parte Requested Hearing Date: October 15,

) 2019 (continued from September 16, 2019)

TELEPHONE APPEARANCE


TO THE COURT, ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 15, 2019, at 9:30 a.m , or as soon thereafter as the matter can be heard in Department 82 of this Court, at 111 N. Hill Street, Los Angeles, California 90012, Petitioner, by and through undersigned counsel, will apply *ex parte* for an order directing Respondent to show cause why it should not be held in contempt of this Court, pursuant to C.C.P. section 1209 (a)(5), for willful disregard of the Court's Order entered on June 17, 2019.

This application is made on the grounds that Respondent has willfully failed to search for and provide the public records identified in the Court's order. Further, Respondent has not provided a date upon which it will produce the records, and Respondent has ceased responding to Petitioner's communications regarding this matter, showing Respondent's intention to continue to willfully refuse to comply with the Order.

1 This application is based on the application itself and supporting memoranda of points and  
2 authorities, the concurrently filed declaration of Abenicio Cisneros and exhibits submitted  
3 therewith, the concurrently filed charging affidavit, the records on file in this case, and such further  
4 evidence and argument as may be properly presented at the hearing in this Application.

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7 Dated: October 7, 2019

By:   
Abenicio Cisneros  
Attorney for Petitioner

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

On June 17, 2019, this Court entered an Order Granting Petition for Writ of Mandate in favor of Petitioner and against Respondent. The Order requires, *inter alia*, that Respondent (“the BID”) conduct an additional search for and produce public records responsive to five of Petitioner’s requests. (Cisneros Decl. Ex. A.) As of this writing, 110 days have passed and, despite being so ordered, the BID has failed to produce even a single public record to which Petitioner is entitled.

This matter came before the Court at an ex parte hearing on September 16, 2019. At that hearing, the Court directed Respondent to submit declarations explaining what searches Respondent conducted, including which individuals conducted searches, the parameters of the search, and the results of the search. The Court further directed Respondent to lodge the declarations with the Court five (5) court days prior to the continued hearing. Additionally, the Court directed Petitioner to submit a charging affidavit that more clearly sets forth the elements of contempt including to whom it is specifically directed.

In the time that has passed since the September 16 hearing, Petitioner contacted Respondent repeatedly with an offer that Petitioner would not seek an order to show cause if Respondent would only provide the declarations showing compliance. While Respondent represented that it would provide the declarations, it has failed to do so.

Therefore, Petitioner respectfully seeks entry of an order to show cause: (1) why Respondent, in the person of its Board President Tom Kneafsey, should not be held in contempt of the Order issued on June 17, 2019 and (2) why Respondent should not be ordered to compensate Petitioner for the reasonable attorney’s fees and costs incurred in connection with this proceeding, together with any other relief the court deems just and proper.

**I. Respondent Should Be Held in Contempt for Failing to Comply with a Lawful Court Order**

Pursuant to California Code of Civil Procedure § 1209(a)(5)<sup>1</sup> “disobedience of any lawful

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<sup>1</sup> Unless otherwise stated, all reference to code sections are to the California Code of Civil Procedure.

1 judgment, order, or process of the court” is a contempt of the authority of the court. When contempt  
2 is committed outside the immediate view and presence of the Court or Judge, “an affidavit shall be  
3 presented to the court or judge of the facts constituting the contempt.” § 1211(a). In addition, courts  
4 have the “inherent power to punish for contempt of court,” which is “a necessary incident to the  
5 execution of the powers conferred upon the court and is necessary to maintain its dignity, if not its  
6 very existence.” *See In re Buckley* (1973) 10 Cal.3d 237, 247 (internal citations omitted).

7 The elements of contempt are: (1) a valid order from a court; (2) the litigant's knowledge of  
8 the order; (3) the litigant's ability to comply with the order; and (4) the willful failure to comply. *In*  
9 *re Ivey* (2000) 85 Cal.App.4th 793, 798. As discussed in detail below, and as detailed in the  
10 attached charging affidavit, Respondent is in contempt.

11 A. The Court Issued a Valid Order

12 As stated above, the Court issued an Order Granting Petition for Writ of Mandate on June 17,  
13 2019. This order was duly signed by the Judge and lawfully entered. There is no question that the  
14 Order was valid.

15 B. Respondent Has Knowledge of the Order

16 Respondent clearly has knowledge of the Order. First, Respondent was represented by  
17 counsel at the June 4, 2019 hearing, at which the Court adopted its tentative ruling as the order of  
18 the Court and required that Respondent conduct a search for and produce additional public records.  
19 *Cisneros Decl. Ex. A*. Second, Petitioner served Respondent with notice of entry of the Order on  
20 June 18, 2019 and filed proof of such service with the Court on June 19, 2019. *Id*. Finally,  
21 Respondent’s counsel has repeatedly communicated with Petitioner’s counsel regarding the Order.  
22 *Cisneros Decl. Exhs. C, D*.

23 Further, Respondent’s counsel attended the September 16, 2019, ex parte hearing in this  
24 matter concerning its non-compliance with the Court’s order in this matter. *Cisneros Decl. Ex. B*. At  
25 that hearing, Respondent demonstrated knowledge of the order. *Cisneros Decl. ¶ 5*. Respondent’s  
26 knowledge of the Order is manifest.

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1 C. The Court's Order Required Respondent to Take Actions Within Its Control

2 In relevant part, the Order required Respondent to conduct an additional search for and  
3 produce public records held by BID staff and Board Members which are responsive to five of  
4 Petitioner's requests. *Cisneros Decl. Ex. A*. At all times since the Order was issued, performance of  
5 the required acts—conducting an additional search for records and producing responsive records  
6 within its possession—has been within Respondent's power. Respondent—in the persons of its staff  
7 and board—have the ability at any time to search for records in their possession. Indeed, no entity  
8 other than Respondent has the ability to comply with this Order, as the requested public records that  
9 must be searched for and produced are in Respondent's sole possession and control. Despite its  
10 ability to comply with the Order, Respondent has failed to perform these required actions.

11 D. Respondent Has Willfully Failed to Comply with the Order

12 Respondent has been granted ample time and opportunity to comply with the terms of the  
13 Order. At the September 16, 2019, ex parte hearing, the Court admonished Respondent that its  
14 counsel's vague verbal representations that he had “talked to some people and they didn't find  
15 anything” is not sufficient to demonstrate compliance with the Order. *Cisneros Decl. ¶ 5*. The Court  
16 directed Respondent to provide declarations explaining what individuals conducted searches, what  
17 the individuals searched for, and what the results of the searches are, and to lodge those declarations  
18 with the Court five (5) courts days prior to the continued ex parte hearing calendared for October  
19 15, 2019. *Cisneros Decl. Ex. B*.

20 Petitioner contacted Respondent via email seven (7) times in an effort to resolve this matter  
21 without using additional court resources. *Cisneros Decl. Ex. D*. Notably, on September 25, 2019,  
22 Petitioner informed Respondent that it was willing to no longer seek an order to show cause if  
23 Respondent provided the ordered declarations to Petitioner. *Cisneros Decl. Ex. D*. Respondent  
24 ignored most of Petitioner's emails. *Id.* On September 29, Respondent indicated that Petitioner need  
25 not perform additional legal work because Respondent intended to provide the declarations. *Id.*  
26 Petitioner informed Respondent that the declarations must be provided by close of business on  
27 Friday, October 4 because Petitioner's additional materials were due to be lodged with the court on  
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1 Monday, October 7. *Id.* Respondent failed to provide the declarations. *Cisneros Decl.* ¶ 14.

2 The BID's failure to provide the declarations indicate that its staff and Board have continued  
3 to refuse to comply with the Court's order. To date, approximately three and a half months have  
4 passed since the Court issued its order, and Respondent has not provided a single record, or any  
5 indication that it has taken action to comply, other than its counsel's vague representations that  
6 someone at the BID did some kind of search and found nothing. Particularly in light of  
7 Respondent's failure to provide the requested declarations, it is clear that Respondent's failure to  
8 comply with the Order has been willful and deliberate.

9 **II. Conclusion**

10 Petitioner, by and through undersigned counsel, has repeatedly contacted Respondent's  
11 counsel in order to attempt to induce Respondent to comply with the Order as required by law. Prior  
12 to the September 16, 2019, ex parte hearing, Petitioner either called or emailed Respondent about  
13 this matter seventeen (17) times. *Cisneros Decl. Ex. B.* The BID ignored the large majority of these  
14 communications. After the September 16, 2019, ex parte hearing to show cause re contempt,  
15 Petitioner contacted Respondent seven (7) additional times. *Cisneros Decl. Ex. D.* Again,  
16 Respondent ignored the large majority of these communications, promised to provide declarations,  
17 and then failed to do so.

18 Despite Petitioner's dogged efforts, and the Court's direction to provide declarations,  
19 Respondent has provided no evidence to demonstrate that it has conducted an adequate search for  
20 records, and Respondent has produced no additional records. *Cisneros Decl.* ¶ 14. Respondent  
21 therefore continues to unlawfully withhold records to which Petitioner and the public at large are  
22 statutorily entitled. *See Cal. Gov't Code § 6250, et seq.*

23 Accordingly, as established by this Memorandum of Points and Authorities, the Declaration  
24 of Abenicio Cisneros, Esq. filed and served herewith, and the charging affidavit filed and served  
25 herewith, it is clear that Respondent's continued disobedience of this Court's lawful Order is a  
26 contempt of this Court.

27 Because Respondent continues to disobey the Court's lawful Order, Petitioner respectfully  
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1 moves for this Court to issue an Order to Show Cause why Respondent should not be held in  
2 contempt and made to pay an appropriate fine up to one thousand dollars. *See* § 1218(a). Petitioner  
3 also respectfully requests that Respondent be ordered to compensate Petitioner for reasonable  
4 attorneys' fees and costs incurred in connection with the contempt proceeding pursuant to  
5 § 1218(a), in an amount to be set in response to Petitioner's forthcoming Motion for Attorney's  
6 Fees. Petitioner further requests any other relief that the Court deems just and proper.

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9 Dated: October 7, 2019

By: 

10 Abenicio Cisneros  
11 Attorney for Petitioner  
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